

sexually oriented offender to a Tier I offender under the Ohio version of the Adam Walsh Act (R.C. 2950.031 and 2950.032). He further contends that trial counsel was ineffective for failing to assert the constitutional violations. Huffman also claims that he was not made aware that he had been reclassified from a sexually oriented offender to a Tier I offender

{¶ 2} We conclude that trial counsel was not ineffective for failing the assert the claim of deprivation of constitutional rights, because the rights Huffman cites on appeal have no bearing on the issue of the appropriateness of Huffman's conviction. Furthermore, any failure in notification of Huffman's change of status did not affect the appropriateness of his conviction – he failed to comply with his obligations as a sexually oriented offender. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 3} In September 2005, Huffman was convicted of Illegal Use of a Minor In Nudity Oriented Material, in violation of R.C. 2907.323(A)(3). He was sentenced accordingly and classified as a sexually oriented offender by the Warren County Common Pleas Court. The sexually oriented offender classification was made pursuant to Ohio's version of the federal Megan's Law, which was adopted by Ohio in 1996, and codified by Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560, 2601. See, *State v. Bodyke*, __Ohio St.3d __, 2010-Ohio-2424, ¶6. Pursuant to that classification, Huffman was required to verify his address one time per year for a period of ten years.

{¶ 4} In October 2006, Huffman was indicted by a Montgomery County Grand Jury on one count of Failure to Notify, in violation of R.C. 2950.05(A) and (E)(1). Following his conviction, the Montgomery County Court of Common Pleas sentenced Huffman to seven months in jail.

{¶ 5} “In 2006, Congress passed the Adam Walsh Child Protection and Safety Act * * *,” which “divides sex offenders into three categories or ‘tiers’ - Tier I, Tier II, and Tier III - based solely on the crime committed.” *Bodyke*, supra at ¶ 18. In 2007, the Ohio General Assembly “enacted 2007 Am.Sub.S.B. No. 10[, which] repealed Megan’s Law and replaced it with a new, retroactive scheme that includes the tier system required by Congress. R.C. Chapter 2950.” *Id.* at ¶ 20. Ohio law required the Ohio Attorney General to determine the new classification for existing offenders, and to provide notification of the reclassification. *Id.* at ¶ 22, citing R.C. 2950.031(A)(1) and 2950.032(A)(1)(a) and (b).

{¶ 6} Although not clear from this record, some time in 2007, Huffman was reclassified as a Tier I Offender pursuant to the newly enacted law. This classification maintained the once per year reporting requirement, but increased the reporting period from ten to fifteen years.

{¶ 7} On June 30, 2009, Huffman was indicted on a second charge of Failure to Notify, in violation of R.C. 2950.05(A) and (F)(1). Following a plea of no contest, the trial court sentenced him to a mandatory prison term of three years, pursuant to R.C. 2950.99. From his conviction and sentence, Huffman appeals.

{¶ 8} Huffman's First Assignment of Error is:

{¶ 9} "APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AS COUNSEL DID NOT RAISE THE FACT THAT APPELLANT WAS UNAWARE OF THE REPORTING REGISTRATION REQUIREMENTS."

{¶ 10} Huffman contends that he was not provided appropriate notice of his reclassification by the Attorney General, and thus "could not be expected to understand his rights, remedies, and duties under this increasingly complex and controversial subject of registration requirements, and the penalties for failure to register." He therefore claims trial counsel was ineffective for failing to raise such an argument with the trial court. In support, he refers to a written statement made in a letter to appellate counsel, in which Huffman states, in part: "I was also completely unaware of the changes in the new registration laws. Because believe me! , if I would have known of those changes, I would not be hear. [sic]."

{¶ 11} In essence, Huffman argues that he was not properly advised of the change in his status from a sexually oriented offender to a Tier I offender, and that had he been made aware of the change, he would have complied with his reporting duties.

{¶ 12} We begin by noting that the portions of Huffman's letter to his appellate counsel cited in his brief are not properly before us, since they are not a part of the record of the proceedings in the trial court. Furthermore, there is nothing in the record before us to support the claim that the Attorney General failed to provide the required notice to Huffman. Finally, Huffman cannot maintain a claim that he was unaware of the fact that he was required to verify his address every year, since he was in the fourth year of his original, ten-year reporting period. In other words, the

reclassification had no effect upon his duty to register at the time of his 2009 violation. Huffman was aware that he was required to report once per year for ten years according to his original classification. Huffman still had six more years of the original ten-year period to make yearly verifications. Thus, even without reference to a reclassification, Huffman was in violation of his reporting requirements.

{¶ 13} Huffman also appears to claim that he was not aware that the penalty for Failure to Notify would be more severe under the new classification than it would have been under the old classification. We note that the penalty for Failure to Notify is not contingent upon the classification of the offender. Instead, it is based solely upon the nature of the original conviction for Illegal Use of A Minor in Nudity Oriented Material. See, R.C. 2950.99. Thus, a change in classification has no bearing on the penalty for failure to comply with notification requirements.

{¶ 14} Huffman's First Assignment of Error is overruled.

III

{¶ 15} Huffman's Second, Fourth and Fifth Assignments of Error are as follows:

{¶ 16} "APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AS COUNSEL DID NOT RAISE THE FACT THAT APPELLANT'S SEX OFFENDER REGISTRATION REQUIREMENTS VIOLATE HIS CONSTITUTIONAL RIGHTS.

{¶ 17} "THE NINTH AMENDMENT OF ALL OTHER ENUMERATED RIGHTS INCREASES THE BURDEN ON THE STATE TO TAKE AWAY THE LIBERTIES OF THE APPELLANT SO THE CONTROVERSIAL REGISTRATION REQUIREMENTS MUST BE WEIGHED IN FAVOR OF APPELLANT.

{¶ 18} “THE CLASSIFICATION OF THE APPELLANT UNDER THE SEX OFFENDER REGISTRATION REQUIREMENTS PROVIDED BY OHIO REVISED CODE §2950.04-05 AND SENATE BILL 10 VIOLATED HIS SUBSTANTIVE DUE PROCESS RIGHTS, AS WELL AS THE PROTECTIONS PROVIDED UNDER THE SEPARATION OF POWERS DOCTRINE AND THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE.”

{¶ 19} Huffman contends that the reclassification and reporting requirements of the Ohio sex offender classification system are unconstitutional. Specifically, he argues that the system operates to deprive offenders of Due Process of law, is a violation of the concept of separation of powers, and violates the prohibition against cruel and unusual punishment. He further claims that trial counsel was ineffective for failing to argue the deprivation of constitutional rights in the trial court.

{¶ 20} “When considering an allegation of ineffective assistance of counsel, a two-step process is usually employed. First, there must be a determination as to whether there has been a substantial violation of any of defense counsel's essential duties to his client. Next, and analytically separate from the question of whether defendant's Sixth Amendment rights were violated, there must be a determination as to whether the defense was prejudiced by counsel's ineffectiveness.” *State v. Bradley* (1989), 42 Ohio St.3d 136. Courts “must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.” *Strickland v. Washington* (1984), 466 U.S. 668, 687-688. Thus, a convicted defendant who complains of the ineffectiveness of counsel's assistance must show that counsel's representation fell below an objective standard of reasonableness and that counsel's

performance results in prejudice to the defendant. *Id.* To demonstrate prejudice, the defendant must prove that there exists a reasonable probability that, absent counsel's errors, the result of the trial would have been different. *Bradley*, *supra*, at 143. The appellant has the burden of proof on the issue of counsel's ineffectiveness because a properly licensed attorney is presumed competent. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, ¶ 62.

{¶ 21} The constitutional claims raised by Huffman have been previously rejected by this court. See, *State v. Desbiens*, Montgomery App. No. 22489, 2008-Ohio-3375; *State v. Barker*, Montgomery App. No. 22963, 2009-Ohio-2774; *State v. King*, Miami County, 2008-Ohio-2594. But the Ohio Supreme Court has subsequently ruled that the reclassification scheme is unconstitutional, in part, as a violation of the doctrine of separation of powers. *State v. Bodyke*, __Ohio St.3d __, 2010-Ohio-2424 finding R.C. 2950.031 and 2950.032 unconstitutional.

{¶ 22} We cannot say that trial counsel was ineffective for failing to raise the constitutionality of the reclassification statutes, since the reclassification has no bearing on the outcome of Huffman's prosecution. According to *Bodyke*, Huffman's reclassification as a Tier I offender cannot be enforced, and his original classification as a sexually oriented offender will be reinstated. *Id.* at ¶66. However, as stated in Part II above, Huffman was required to register once per year even before his reclassification from a sexually oriented offender to a Tier I offender. He failed to do so and was appropriately prosecuted, convicted and sentenced.

{¶ 23} The Second, Fourth and Fifth Assignments of Error are overruled.

IV

{¶ 24} Huffman’s Third Assignment of Error states as follows:

{¶ 25} “THE RADIUS AND REGISTRATION REQUIREMENTS PUNISH AND PROVIDE NO RELEVANT PROTECTION TO THE PUBLIC AGAINST DEFENDANTS WHO COMMITTED CRIMES VIA THE INTERNET OR AGAINST RELATIVES IN THE HOME.”

{¶ 26} Huffman contends that there is no rational relationship between his crime and the registration requirements annexed thereto.

{¶ 27} Since, as stated above, Huffman’s original status as a sexually oriented offender will be reinstated pursuant to *Bodyke*, supra, any claims regarding the registration requirements under the Adam Walsh Act as adopted by Ohio are rendered moot. Any claim made with regard to his original classification should have been made on direct appeal of his 2005 conviction for Illegal Use of a Minor in Nudity Oriented Material since that classification was made at that time.

{¶ 28} The Third Assignment of Error is overruled.

IV

{¶ 29} All of Huffman’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and KLINE, J., concur.

(Hon. Roger L. Kline, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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